



Office of the Attorney General

State of Texas

March 16, 1993

DAN MORALES

ATTORNEY GENERAL

Mr. Randel B. Gibbs
Attorney for Garland Independent
School District
Law Offices of Earl Luna, P.C.
4411 Central Building
4411 North Central Expressway
Dallas, Texas 75205

OR93-089

Dear Mr. Gibbs:

You have requested our determination on the availability under the Open Records Act, article 6252-17a, V.T.C.S., of certain personal notes of school teachers regarding disciplinary matters concerning the requestor's daughter. Your request was assigned ID# 17572.

In your letter to us, you described the notes at issue here as "notes made by individual teachers for their own purposes, which are not disclosed to others and not made a part of" the student's file. You also explained that these notes were not "education records" for purposes of the Family Education and Privacy Rights Act, 20 U.S.C. section 1232g (FERPA) since section 1232g(a)(4)(B) of FERPA expressly excludes such notes from the definition of "education records." Sections 1232g(a)(4)(A) and 1232g(a)(4)(B) provide in pertinent part:

(4)(A) For the purposes of this section, the term 'education records' means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which--

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include--

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

20 U.S.C. § 1232g(a)(4)(A)-(B).

Section 3(a)(14) of the Open Records Act excepts certain student records from required public disclosure under the Open Records Act. Specifically, that section excepts from required public disclosure "student records at educational institutions funded wholly or in part, by state revenue." That section, however, expressly requires that

such records shall be made available upon request of educational institution personnel, the student involved, or that student's parent, legal guardian, or spouse.

In Attorney General Opinion H-447 (1974), this office defined "student records" for the purposes of section 3(a)(14) to include

information concerning the student himself and his individual relationship to the educational institution. A list of student records would include, but not necessarily be limited to, the following: applications for admission; standardized achievement test scores, attendance data, scores on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and *reports of behavioral patterns or disciplinary actions*.

Attorney General Opinion H-447 at 2 (emphasis added). The teacher notes at issue here concern a student and various disciplinary matters, and thus, they are "student records" for purposes of section 3(a)(14). As such, section 3(a)(14) expressly requires the notes to "made available upon request of . . . [the] student's parent."

We requested assistance from the federal Family Policy Compliance Office of the Department of Education in reconciling the provisions of FERPA with regard to the status of teacher notes about students in the sole possession of the teachers or their substitutes and the requirements of section 3(a)(14) of the Open Records Act. In response, we were advised in writing by the federal office that while FERPA does not require such teacher notes to be released to parents, FERPA does not prohibit the release of such notes to parents. Consequently, the federal office determined there was no conflict between the requirement in section 3(a)(14) that the notes in issue here be made available to the parent on request under the Open Records Act and the provisions of FERPA excepting such notes from the definition of "education records" for purposes of FERPA and thus from FERPA's requirements that "education records" be made available to parents. A copy of the federal office's response is attached to this ruling.

Given the federal office's response to our inquiry, we conclude that the district must release the notes at issue here to the parent who has requested them in accordance with section 3(a)(14). As noted in your letter to us and in the attached letter from the federal office, once the teacher notes at issue here are released to the parent they will no longer be within the scope of the section 1232g(a)(4)(B)(i) exception, and thus, they will become "education records" for purposes of FERPA.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-089.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/lmm/le

Enclosures: Submitted documents
Attorney General Opinion H-447 (1974)
Copy of Family Policy Compliance Office letter

Ref.: ID#s 17572, 17873

cc: Mr. Glenn D. Seeley
2537 Pepperidge
Garland, Texas 75044
(without documents; with opinion and federal letter)